IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 708 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE BANK OF INDIA

Versus

H.FARID MOHAMMED AND CO.

Appearance:

1. First Appeal No. 708 of 1984
MR TRIVEDI for MR AC GANDHI for appellant
MR AM BUKHARI for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant Bank in this appeal has challenged the judgment and decree dated 28th February 1983 passed by the City Civil Court, at Ahmedabad, in Civil Suit No.2167 of 1979, for a limited purpose. The trial Court, under the impugned judgment, has directed the respondents to pay to the appellant Bank Rs.2,57,379.50 ps. plus interest on Rs.2,00,000/- at the rate of 4-1/2% per annum from the date of the suit till realisation plus the costs of the suit. The trial Court has also directed the respondents to pay the said amount by way of instalments.

The grievance voiced in this appeal is to the effect that even though the trial Court has granted the decree in sum of Rs.2,57,379.50 ps., it has erroneously fixed the amount of Rs.2,00,000/- and to pay the interest only thereon and that too, at the rate of 4-1/2% per annum. It was, therefore, submitted by learned Counsel for the appellant that the trial Court ought not to have fixed Rs.2,00,000/- for the purpose of counting interest and the interest ought to have been awarded at the contractual rate, i.e. at the rate of 11% per annum.

Since the respondents defendants have admitted the claim of the appellant Bank by filing Purshis at Exh.25 and prayed for instalments, it is not necessary for us to narrate the facts from the pleadings.

On perusal of the impugned judgment, it appears to us that the learned Judge has committed an error by directing the respondents to pay the interest on Rs.2,00,000/- even though the decree is passed in sum of Rs.2,57,379.50 ps. The said direction is totally unjustifiable. In fact, no reasons are given by the learned Judge in suggesting the amount of Rs.2,00,000/instead of Rs.2,57,379.50 ps. and to pay the interest thereon. Learned Counsel Mr.Bukhari appearing for the respondents has virtually conceded to the said position. We accordingly hold that the plaintiff is entitled to recover Rs.2,57,379.50 ps. together with interest on the said amount from the respondents.

Learned Counsel appearing for the appellant submitted that there was no justification in granting interest at the rate of 4-1/2% per annum especially when the respondents are bound to pay the interest at the contractual rate of 11%. To substantiate his submission, learned Counsel has invited our attention to the decisions rendered by this Court in the case of Central

Bank of India v. P.B. Garments Inds. Pvt.Ltd., reported in 1985 GLH 781 and in the case of Union Bank v. Narendra Plastics and ors., reported in 1990(2) GLH 555. This Court, in the aforesaid decisions has laid down that ordinarily in commercial transactions, the contractual rate of interest should be the rule and departure is rare exception. On going through the said decisions, it is clear that the discretion of the Court to reduce the rate of interest in a given case is not taken away. The learned trial Judge, in the instant case has taken into consideration the fact that because of the Cyclone, the business of the respondents is affected, the respondents deserve little concession in the matter and hence reduced the rate of interest to 4-1/2%. Thus, a discretion is exercised in favour of the respondents in the instant case. Cyclone being a natural calamity which has damaged the factory of the respondents, may be a ground. However, reduction of interest to the rate of 4-1/2% is against the contractual rate of interest and the same in our opinion appears to be quite unreasonable. Taking into consideration the facts and circumstances of the case, instead of awarding interest at the rate of 11% per annum, if we direct the respondents to pay interest at the rate of 9% (nine per cent) per annum on the amount of Rs.2,57,379.50 ps., the same would meet the ends of justice. We accordingly, allow this appeal to the aforesaid extent.

In the result, the appeal is allowed and the judgment and decree passed by the learned trial Judge, dated 28th February 1983 in Civil Suit No.2167 of 1979 giving direction to pay the interest on the amount of Rs.2,00,000/- at the rate of 4-1/2% is set aside and instead, we direct the respondents to pay to the plaintiff Rs.2,57,379.50 ps. with interest at the rate of 9% (nine per cent) per annum from the date of the suit till realisation, with costs. Order accordingly.

(Kshitij R. Vyas, J.)

(D.H. Waghela, J.)

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